

2006

# State of Utah v. Darren Coco : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Margaret P. Lindsay; Patrick V. Lindsay; Counsel for Appellant.

Utah Attorney General; Appeals Division; Counsel for Appellee.

---

## Recommended Citation

Brief of Appellant, *Utah v. Coco*, No. 20061051 (Utah Court of Appeals, 2006).

[https://digitalcommons.law.byu.edu/byu\\_ca2/6970](https://digitalcommons.law.byu.edu/byu_ca2/6970)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**IN THE UTAH COURT OF APPEALS**

---

**STATE OF UTAH,**

Plaintiff/Appellee

vs.

**DARREN COCO,**

Defendant/Appellant

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case No. 20061051-CA

---

**BRIEF OF APPELLANT**

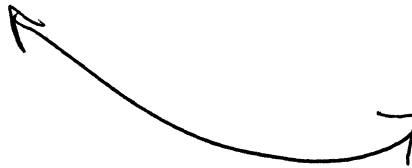
Margaret P. Lindsay (6366)  
99 East Center Street  
Orem, UT 84058  
(801)318-3194

Patrick V. Lindsay (8309)  
290 West Center Street  
P.O. Box L  
Provo, UT 84603  
(801) 373-4912

Attorneys for Appellant

Utah Attorney General  
Appeals Division  
160 East 300 South  
Sixth Floor  
P.O. Box 140854  
Salt Lake City, UT 84114

Attorneys for Appellee



**FILED  
UTAH APPELLATE COURT  
APR 20 2007**

**IN THE UTAH COURT OF APPEALS**

---

<b>STATE OF UTAH,</b>	:	
	:	
Plaintiff/Appellee	:	
	:	
vs.	:	Case No. 20061051-CA
	:	
<b>DARREN COCO,</b>	:	
	:	
Defendant/Appellant	:	
	:	

---

**BRIEF OF APPELLANT**

Margaret P. Lindsay (6366)  
99 East Center Street  
Orem, UT 84058  
(801)318-3194

Patrick V. Lindsay (8309)  
290 West Center Street  
P.O. Box L  
Provo, UT 84603  
(801) 373-4912

Attorneys for Appellant

Utah Attorney General  
Appeals Division  
160 East 300 South  
Sixth Floor  
P.O. Box 140854  
Salt Lake City, UT 84114

Attorneys for Appellee

# TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
JURISDICTION OF THE UTAH COURT OF APPEALS .....	1
ISSUES PRESENTED AND STANDARDS OF REVIEW .....	1
CONTROLLING STATUTORY PROVISIONS .....	2
STATEMENT OF THE CASE .....	2
A.    Nature of the Case .....	2
B.    Trial Court Proceedings and Disposition .....	2
STATEMENT OF RELEVANT FACTS .....	4
SUMMARY OF ARGUMENT .....	18
ARGUMENT	
I.    The Trial Court Erred In Treating Coco’s Conviction For Obstructing Justice as a Second Degree Felony. ....	18
CONCLUSION AND PRECISE RELIEF SOUGHT .....	22
ADDENDA. ....	24
Utah Code Annotated § 76-8-306	
Utah Code Annotated § 76-3-203.1	
Jury Instructions #28-29	
Motion to Arrest Judgment	

## TABLE OF AUTHORITIES

### Statutory Provisions

Utah Code Ann. § 76-3-401(2) .....	8
Utah Code Ann. § 76-5-401 (1953).....	2
Utah Code Ann. § 76-5-402 (1953).....	2
Utah Code Ann. § 76-5-403 (1953).....	2
Utah Code Ann. § 76-5-404 (1953).....	3
Utah Code Ann. § 78-2a-3(2)(e) .....	1

### Cases Cited

<i>State v. Bingham</i> , 575 P.2d 197 (Utah 1978).....	20-21
<i>State v. Bluff</i> , 2002 UT 66, 53 P.3d 1210, cert. denied, 537 U.S. 1172, 123 S.Ct. 999, 154 L.Ed.2d 914 (2003) .....	1
<i>State v. Bryan</i> , 709 P.2d 257 (Utah 1985) .....	22
<i>State v. Fedorowicz</i> , 2002 UT 67, 53 P.3d 1194, cert. denied, 537 U.S. 1123, 123 S.Ct. 859, 154 L.Ed.2d 805 (2003) .....	22

## IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH,	:	
	:	
Plaintiff / Appellee	:	
	:	
vs.	:	Case No. 20061051-CA
	:	
DARREN COCO,	:	
	:	
Defendant / Appellant	:	
	:	

---

### JURISDICTION OF THE UTAH COURT OF APPEALS

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated § 78-2a-3(2)(e).

### ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether the trial court erred in sentencing Coco to a second degree felony pursuant to his conviction by a jury of obstructing justice. “A trial court’s interpretation of a statutory provision is a legal question which [this Court] reviews for correctness.” *State v. Bluff*, 2002 UT 66, ¶31, 52 P.3d 1210, *cert. denied*, 537 U.S. 1172, 123 S.Ct. 999, 154 L.Ed.2d 914 (2003).

This issue was preserved in a motion to arrest judgment filed prior to sentencing (R. 190-200).

## **CONTROLLING STATUTORY PROVISIONS**

All relevant statutory provisions are set forth in the Addenda of the Appellant's Brief.

## **STATEMENT OF THE CASE**

### **A. Nature of the Case**

Darren Coco appeals from the judgment, sentence and commitment of the Third District Court after he was acquitted of aggravated assault, and convicted of obstructing justice, a second degree felony.

### **B. Trial Court Proceedings and Disposition**

Darren Coco was charged by Information filed in Third District Court on November 21, 2005 with aggravated assault, a second degree felony, in violation of Utah Code Annotated § 76-5-103 (R. 1). An Amended Information was filed on November 30, 2005 which added a second count: obstructing justice, a second degree felony, in violation of Utah Code Annotated § 76-8-306 (R. 13-15). Count II also contained a group crime enhancement pursuant to Utah Code Annotated § 76-3-203.1 (R. 14).

A preliminary hearing was held before Judge Anthony Quinn on March 17, 2006, and Coco was bound-over for trial on both charges upon a finding of probable cause (R. 55-56, 250: 7-8). Coco was arraigned on April 28, 2006 (R. 64).

On June 22, 2006 a hearing was held on the co-defendant's motion to quash the bind-over of count II (R. 101). Coco joined in the motion (R. 101, 251: 13-14). On June 26, 2006 Judge J. Dennis Frederick granted Coco's motion to quash count II (R. 103-04). However, upon further argument the trial court reconsidered his earlier ruling and denied the motion to quash (R. 112).

On June 26, 2006 the State filed a motion in limine asking for a ruling that would prohibit the defense from mentioning that Donald Joseph was a crack cocaine dealer, or anything relating to crack cocaine; and also that any testimony indicating that Coco or Keith Degruy, the co-defendant, are evacuees because of Hurricane Katrina (R. 105-09). Immediately prior to trial the State withdrew the motion in regards to Donald Joseph, and the parties agreed that Coco's status as an evacuee would come in but that no argument would be made by either side as it relates to that fact (R. 252: 3).

On June 27-28, 2006 a jury trial was held before Judge Frederick (R. 129-132, 252, 253). At the close of the State's case, Coco made a motion for a directed verdict (R. 131, 253: 248).

After a two hour deliberation, the jury acquitted Coco on count I (aggravated assault), and convicted him on count II (obstructing justice) (R. 131-32, 176, 177, 253: 321). The jury also found that Coco committed count II in concert with two or more persons (R. 178, 253: 321).

On August 4, 2006 Coco filed a Motion to Arrest Judgment on count II arguing that conviction should be entered as a third degree felony rather than a



second degree felony (R. 190-200). The motion to arrest was orally denied prior to sentencing (R. 251: 35).

On August 25, 2006 Coco was sentenced to 1-15 years in the Utah State Prison with credit for 276 days served (R. 217-18, 251: 38-39).

Coco filed a notice of appeal on September 12, 2006 in Third District Court (R. 227).

## **STATEMENT OF RELEVANT FACTS**

### **A. Testimony of Jerry Lee Graham**

Jerry Lee Graham (“Jay”) testified that he arrived at the Citifront Apartments, located at 641 West N. Temple, on November 18, 2005 between 7:30-8:00 p.m. (R. 252: 53, 57). He was with Donald Joseph (“Africa” or “DJ”) and Joseph’s girlfriend, Cocoa Marquez (R. 252: 53, 54). He’d known Joseph for several years and Marquez approximately a year (R. 252: 53). Joseph drove to the apartments (R. 252: 54). He and Joseph had been to the apartments earlier in the week looking for Marquez, and he met Coco (R. 252: 58-59). Coco told them how he helped Marquez out once when she’d been “robbed or something” (R. 252: 98).

They went to Coco’s apartment, which was located on the second or third floor (R. 252: 60). Graham’s motivation for going was “because a friend of mine had been violated, and my friend, Africa, her being his girlfriend, I felt like I had to go with him, because he asked me to ride with him” (R. 252: 61). His purpose was to “watch his back”—to ensure that nobody interfered or jumped him (R. 252:

61, 96). Graham suggested that they should be “strapped,” but Joseph told him “we don’t need it” and that he was just going to “talk” to Coco (R. 252: 91, 100).

At the apartment they knocked or rang the doorbell and were let in (R. 252: 62). They walked into the foyer and besides Coco there were two other people in the apartment, a male by the name of “Keith” and a female with the name of “Phyllis” (R. 252: 63-64, 68). Keith and the woman were sitting at a table (R. 252: 64). He and Joseph moved so Coco could see Marquez, and he was surprised to see her (R. 252: 64). Graham asked Marquez if Coco was the one who’d raped her (R. 252: 65). Before Coco could respond, Joseph “hit him” hard on the right side of his face and his knees buckled (R. 252: 65, 103).

Graham could see Keith coming towards him so he told Keith to “sit back down, mind your business” (R. 252: 65). Graham testified that he was the only one who spoke to Keith, and he denied showing him a gun (R. 252: 104).

Coco and Joseph struggled (R. 252: 66). Graham observed an open pocket knife on the table, which he picked up, closed and put in his pocket (R. 252: 66, 68). Graham did not have a weapon on his person (R. 252: 67). He doesn’t believe Joseph or Marquez had any weapons either (R. 252: 67-68). He later learned that Joseph had a gun on him (R. 252: 90). Graham denied ever making contact with Coco or stabbing him with his hand or any type of object (R. 252: 105-06).

Three minutes later he looked back and Coco was on the ground (R. 252: 70-71). Graham didn’t get involved in the fight (R. 252: 71). He told Joseph that

it was “enough, let’s get out of here” because Joseph was beating Coco, whose face was bloodied (R. 252: 72, 89). Graham was thinking that Joseph was going to “really hurt” or kill Coco (R. 252: 73). Graham saw nothing in Joseph’s hand (R. 252: 73).

Graham and Joseph move towards the door (R. 252: 78). Graham gets to the door and Coco runs past Joseph into the kitchen (R. 252: 78). Graham opens the door and was surprised when Coco came at him with a long knife, approximately 8 inches (R. 252: 78, 83, 111, 113). Graham knocked Coco with the door and got “cut” on his thumb (R. 252: 79). The second time Coco tried to cut him, he dodged it (R. 252: 80). He’s blocked inside the apartment because if he tried to leave Coco would “stab [him] in the back” (R. 252: 80). Coco then stabbed him in the stomach and he was bleeding and “holding my insides” (R. 252: 82-83). Coco “looked at me like real crazy, man. He looked at me like and turned away from me” (R. 252: 84).

Coco turned to Joseph, who was also trying to leave (R. 252: 80, 84). Joseph ran back into the apartment towards a “bedroom or something” chased by Coco (R. 252: 84, 90). Graham staggered out in the hallway, where he is joined by Marquez (R. 252: 84). The two of them left and she called 911 (R. 252: 85). Graham kept his hand on the stomach wound (R. 252: 85). He was taken by ambulance to LDS hospital (R. 252: 85-86). He had surgery and lost part of his stomach, spleen and small intestine, and was hospitalized for seven weeks (R. 252: 86-87). He recently suffered a blockage from the surgery that required treatment

(R. 252: 116-17). He initially told police that he had been robbed but he doesn't remember it (R. 252: 113-14).

## **B. Testimony of Cocoa Marquez**

On the advice of legal counsel, Marquez invoked her Fifth Amendment privilege against self-incrimination (R. 252: 118, 121).

However, an interview with Marquez on November 19, 2005 with detectives Leavitt and Cordon Parks was read to the jury (R. 253: 211):

Marquez indicated that her boyfriend, Joseph, and Graham "came to confront a gentleman from raping me while he was in jail. And then it turned into a fight and the next thing I know, that [Graham] comes out, stabbed. And then I went outside with him to get the ambulance to come and then they took him" (R. 253: 211-12). It was cold outside so she left (R. 253: 212). She called for an ambulance on Graham's phone (R. 253: 213).

She said a man in apartment 408, who goes by the name New Orleans, raped her (R. 253: 213). She met him through "crack and doing drugs and stuff, from the shelter and stuff like that in the park" (R. 253: 214). She said that she had sex with the man because he threatened her (R. 253: 212). There were two other people there at the time, Tigger (black male) and Rose (black girl) (R. 253: 216-17). The man was 30-40 years old, tall, medium build, with a shaved head and a big nose (R. 253: 219). He was the renter of the apartment (R. 253: 220). She remembers his last name being "Coco" (R. 253: 221). The assault and

intercourse took place in the bathroom with her on the sink (R. 253: 223, 227). They all shared some crack (R. 253: 226). The police were called to the apartment that night for another reason (R. 253: 228). Marquez saw them but didn't report the rape (R. 253: 229).

Joseph and Graham confronted him and he denied the allegation (R. 253: 212). Graham went in and "punched him and then they started fighting" and she was pushed out of the doorway (R. 253: 212, 238). Joseph and Graham were fighting with Coco (R. 253: 240). At one point, Joseph was hitting Coco in the head with something in his hand—a metal thing (R. 253: 234, 244). Coco "looked hurt from getting hit in the head, there was blood spattering around" (R. 253: 246). The other girl in the apartment said she couldn't take it anymore and went outside (R. 253: 234). Marquez went with her (R. 253: 234). She didn't want to get hurt (R. 253: 212).

During the interview, she learned that Joseph died and she began to cry (R. 253: 232). She said that Joseph was a "dope dealer" who had taken dope to the apartment earlier (R. 253: 233).

### **C. Testimony of Kelly Kent**

Kelly Kent is a Salt Lake City police officer and he responded with several other officers to 641 West N. Temple on November 19, 2005 at approximately 12:30 a.m. on a possible homicide (R. 252: 123-24). When he arrived other officers were already on the scene and an area on the west side of the apartment

building was taped off (R. 252: 124-25). There was a deceased male laying on the ground outside of some balconies (R. 252: 125). The name of the deceased individual is Donald Joseph (R. 252: 153).

He was assigned to assist the crime scene unit (R. 252: 127). The primary crime scene had been established prior to his arrival (R. 252: 127). He had information from another officer that a Darren Coco lived in one of the fourth floor apartments (R. 252: 128). Looking up from the body he observed blood underneath the banister on the fourth floor balcony directly above (R. 252: 128-29). In addition, Kent noticed that there was a freshly broken branch on a tree near the body (R. 252: 129).

He went to apartment 408 and after a search warrant was obtained, entered at approximately 3-4:00 a.m. (R. 252: 129, 131). The lessee of the apartment was Darren Coco (R. 252: 129-30). He'd received information from neighbors and others that a fight had occurred in the apartment (R. 252: 130). There was "white filmy, powdery stuff" on the outside doorknob that enters into a common hallway (R. 252: 131-32). When he first entered, Kent noticed a heavy smell of cleaners (R. 252: 133). In the kitchen, Kent found PineSol, comet and a wet mop that smelled of PineSol (R. 252: 134). The couch appeared to have been recently moved, and there was a large stain on the carpet underneath "that looked like blood" (R. 252: 135-37). In addition, throughout the apartment—in every room, including the counter, wall, doors, carpet—there was periodic blood spatter (R. 252: 133, 138, 147). There was also blood on the door which leads to the hallway

(R. 252: 139, 146). A knife with a seven inch blade that had red where the blade meets the handle, was found in the dishwasher (R. 252: 143-44). It appeared that the blood inside the apartment had been tampered with and that somebody had attempted to clean it up (R. 252: 147). There was a strong smell of cleaner and a white film was present on the counters, door knobs, etc., like “somebody had rubbed Comet throughout the entire apartment” (R. 252: 147). Underneath the couch and on the backside of the front door is where the greatest amount of blood was found (R. 252: 148).

The dumpster/service room, which was located to the south and down a couple of floors, was also treated as part of the crime scene (R. 252: 134-35). A garbage bag was removed from the dumpster, which was a different color and design than other bags and it “reeked” of PineSol and cleaner (R. 252: 137). Inside the bag were wet rags that smelled of PineSol (R. 252: 137-38).

On the balcony there appeared to be areas of blood which somebody had tried to wipe up (R. 252: 138). There were also blood spatters on the balcony directly below Coco’s apartment that had not been tampered (R. 252: 139).

On November 23<sup>rd</sup> Detective Leavitt obtained information from Keith DeGruy as to the location of other black trash bags which he had thrown in a dumpster to the rear of the Jiffy Lube at 731 West N. Temple (R. 252: 141). From the dumpster a bag was removed and opened (R. 252: 142). It smelled a little of cleaner but inside was found blankets and bloody clothing—a shirt, pants,

shoes (R. 252: 142-43). The garbage bags found in both dumpsters are identical to the bags found in the pantry of Coco's apartment (R. 252: 145, 148).

Between the incident and November 23<sup>rd</sup>, Kent tried to locate Coco by visiting every apartment complex that housed evacuees from Hurricane Katrina in the city, and by following leads as to friends, family and known associates (R. 252: 161-62). Coco was located and questioned on November 23<sup>rd</sup> at the apartment of Lynn Lawrence, a friend of Coco's (R. 252: 148-50). Lawrence had shaved parts of his hair away from some head injuries (R. 252: 151). Coco explained that "he had been over at his apartment, that some people attacked him, beat him with a wrench and these were the injuries, the injuries on his head were cuts that he had received during the attack" (R. 252: 151). Kent observed 4-5 lacerations on his head that appeared to be a few days old (R. 252: 151-52). They were still open and "kind of bloody looking" and needed to be sutured (R. 252: 152). They appeared to be caused by an object rather than a fist—blunt force trauma that had torn the skin (R. 252: 156). Kent also observed that a finger on his left hand was broken or dislocated, and there was some discoloration on his right eye that "looked like an old shiner or a new shiner coming" (R. 252: 152). Coco also indicated that he'd had a headache since the fight (R. 252: 160).

Kent spoke briefly with Phyllis Scott, who was also at Lawrence's apartment (R. 252: 160). Kent also learned of the robbery allegation made by Graham on the night of the incident (R. 252: 162-63).



#### **D. Testimony of Aaron Leavitt**

Aaron Leavitt is a homicide detective with the Salt Lake City Police Department (R. 252: 165). He arrived at the Citifront Apartment Complex at around midnight on November 19, 2005 (R. 252: 165-66). Donald Joseph's body was still in place (R. 252: 166). Leavitt was assigned to be case manager (R. 252: 166). Joseph's body was transported by Leavitt to the Medical Examiner's Office at approximately 1:30 a.m. (R. 252: 167). Leavitt witnessed the autopsy (R. 252: 168). The cause of death was determined by the medical examiner to be a stab wound to the chest (R. 252: 169). It was ruled a homicide (R. 252: 169).

Leavitt briefly entered apartment 408 that night and there was "a bleachy smell" related to Comet or PineSol (R. 252: 170). He observed droplets of blood throughout the apartment on the carpet, a couch that had been moved, blood on a railing, on walls, on the front and back of the front door entry (R. 252: 171).

Leavitt interviewed Coco on November 23<sup>rd</sup> in a homicide interview room on the Sixth Floor of the Public Safety Building, located at 315 East 200 South (R. 252: 171). Coco told him that on the night of the incident he was at the apartment with DeGruy and Scott when Joseph came in the presence of Graham and Marquez (R. 252: 172). Coc was "confronted back by the door of his bedroom in the little hallway off to the left" by Joseph and Marquez (R. 252: 172). Graham had gone into the living room where DeGruy and Scott were (R. 252: 172).

Coco was accused of raping Marquez and of some type of robbery (R. 252: 172). Marquez "had been jacked from some of the property and that he believed

[Marquez] was blaming him for the loss, ‘cause maybe they thought he was an easy target” (R. 252: 172). Coco was attacked by Joseph and beaten about the head with a metal socket wrench (R. 252: 172-73). He described—and Leavitt observed—lacerations around the back and side of the head, a small black eye over his right eye, a very large swollen left middle finger, scrapes on his shoulder, and bruising to his ribs and back (R. 252: 173). The head lacerations were 2-4 inches long (R. 252: 185). Coco said he “was struck and scratched” on the left side of his torso and he speculated that it was from a small knife Graham had taken off the table (R. 252: 186).

A small pocket knife, three inches in length, was found in Graham’s pants pocket as he was being loaded into the ambulance (R. 252: 187). It was on a key chain that belonged to Coco (R. 252: 187). The blade on the pocket knife could pierce the skin (R. 252: 189).

Coco also indicated that Graham entered the fight and it became a two-on-one situation (R. 252: 173). Coco “was able to fight his way from that corner, towards where the kitchen is, towards the front door. The fight spilled over into the kitchen area, up against the far wall of the kitchen with both of them on him” (R. 252: 173). Using the wall as leverage, Coco was able to push them back with his feet and they fell backwards towards the front door (R. 252: 173). He was able to open the drawer, grab a knife and stabbed Graham as he was fleeing the apartment (R. 252: 173). Coco also admitted to stabbing Joseph “to death” (R. 252: 173-74). Joseph fell behind the doorway and Coco dragged it into the living

room behind the little half wall because an apartment manager came and knocked on the door because of noise complaints (R. 252: 175). Coco told Leavitt that otherwise DeGruy moved the body (R. 252: 194).

Coco washed and cleaned the knife and stuck it in the dishwasher (R. 252: 176). He also used PineSol, Comet and rags to clean under where the couch was moved, and the wall (R. 252: 176-77). Coco also cleaned himself up in the bedroom (R. 252: 177, 194). Coco told Leavitt that Scott and DeGruy all were cleaning (R. 252: 177). Coco was cleaning because he didn't want the apartment to be seen in that condition "and people to realize that something like that had occurred in that apartment (R. 252: 179).

Coco did not call the police and indicated that "he thought about it, but was advised not to and that they needed to clean up the apartment (R. 252: 180). Coco indicated that items had been put in the garbage bags and thrown away (R. 252: 181). No socket wrench was found (R. 252: 181).

No gun was found on the scene either (R. 252: 181). However, a gun was later turned into the police department that was supposed to be the gun involved (R. 252: 181). It appeared on the front door step of Lynn Lawrence's apartment (R. 252: 181). They were not able to actually tie the gun to this incident (R. 252: 182).

Coco, DeGruy and Scott were charged criminally because of this incident (R. 252: 182). DeGruy was charged with desecration of a dead human body and obstruction of justice (R. 252: 183). Scott was charged with obstruction of justice

(R. 252: 183). DeGruy and Scott both plead guilty to obstruction of justice as third degree felonies (R. 252: 183).

Coco was booked for homicide in the death of Joseph, however, ultimately he was not charged with homicide (R. 252: 192). Leavitt had discussed with Scott that there was a possible self-defense claim for Coco (R. 252: 192).

When Leavitt arrived on the scene that evening he learned of an alleged robbery of Graham (R. 253: 200). He was advised that Graham indicated that there were two male black adults in hoods (R. 253: 201). However, later that evening Graham disclosed what really happened (R. 253: 201). A key chain with a knife was found on Graham's person (R. 253: 201-02).

No official report concerning any rape of Marquez was done nor was a Code R exam done (R. 253: 205).

Leavitt testified that when blood evidence is destroyed or tampered with, police have a hard time deciphering what occurred, or finding the actual location of the crime scene (R. 253: 208). For example, if the knife had not been cleaned, the blood could have been tested for DNA but instead police were left to speculate on whether it was the knife used (R. 253: 209).

#### **E. Testimony of Keith DeGruy**

Keith DeGruy was at Coco's apartment on November 18, 2005 with Coco and Phyillis Scott (R. 253: 249-51). There was a knock on the door and it was

opened by Coco (R. 253: 251). Graham, Joseph and Marquez came in (R. 253: 251).

DeGruy was sitting at a table (R. 253: 252). He overheard a conversation with Joseph questioning Coco about “somebody’s girlfriend” (R. 253: 252).

DeGruy then looked and saw Joseph pull out a stainless steel type socket wrench and hit Coco on the head with it multiple times (R. 253: 252-53, 255). DeGruy did not try and assist Coco because Joseph had lifted up his shirt and “flashed” a black gun (R. 253: 256).

On the table is a key chain with a knife that Graham picked up (R. 253: 253). Graham looked at the knife and opened its blade (R. 253: 253-54). Graham told DeGruy to sit down and not to move (R. 253: 254). Graham then went and began “assaulting” Coco, too, hitting him on the head and cutting him in his back a couple of times with the little knife he held (R. 253: 257, 266). This was taking place towards the bedroom (R. 253: 258).

The fight moves to the kitchen (R. 253: 260). Coco is bleeding heavily from the back of his head (R. 253: 260). Coco reaches into a drawer and “grabs a knife, to protect himself, I guess” (R. 253: 260-61). The kitchen knife was stainless steel and approximately 7-8 inches long (R. 253: 261). “[F]ighting for his life,” Coco stabbed Joseph a 6-7 times and then while still fighting, stabs Graham in the stomach (R. 253: 262, 266).

Graham fled the apartment (R. 253: 262). Marquez had also left (R. 253: 262). There was a lot of confusion (R. 253: 262).

DeGruy told the others they needed to clean the apartment (R. 253: 270). He cleaned up evidence, wiped blood up, and threw Joseph's body over the balcony (R. 253: 263). Joseph was about 6'1" tall and weighed 190 pounds while DeGruy is 6'3" and weighs 200 pounds (R. 253: 269). Phyllis also cleaned (R. 253: 270).

One of Joseph's shoes was already off (R. 253: 263). He took off the other shoe and threw both away in a trash bag (R. 253: 263, 268). He put other soiled items in the bag and threw it away (R. 253: 263). He threw some items in a dumpster at a Jiffy Lube and other items in the dumpster at the apartment (R. 253: 264). He doesn't know what happened to the socket wrench (R. 253: 265). He took the gun off Joseph and gave it to Coco (R. 253: 268-69).

At some point the apartment manager came in (R. 253: 271). DeGruy believes he saw the blood (R. 253: 271). He had already moved the body, however (R. 253: 271). He had a "feeling" police were on the way (R. 253: 272). The three of them left the apartment and went to a Motel 6 (R. 253: 272).

He plead guilty to obstructing justice (R. 253: 264). When police tracked him down 4-5 days after the incident he could have asked what took them so long (R. 253: 267). He also told police that he was "no snitch" (R. 253: 267).

DeGruy testified that he never saw Coco move the body, clean up around the body, or clean up any other items other than himself (R. 253: 264). Coco is a friend and he would be "happy if justice would be served today" and Coco found not guilty (R. 253: 274).

DeGruy has prior convictions for forgery, and burglary of a dwelling (R. 253: 273).

## **SUMMARY OF THE ARGUMENT**

Coco asserts that the trial court erred in treating his conviction for obstructing justice as a second degree felony rather than a third degree felony. The specific underlying criminal conduct relied on by the jury for conviction of this charge is unknown and could have varied from a class A misdemeanor upwards to a second degree felony. Accordingly, he is entitled to the lesser punishment.

## **ARGUMENT**

### **I. The Trial Court Erred In Treating Coco's Conviction for Obstructing Justice as a Second Degree Felony.**

Coco was acquitted by the jury of aggravated assault, and convicted by the jury of obstructing justice in violation of Utah Code Annotated § 76-8-306. The trial court, as alleged in the criminal Information and as requested by the State, sentenced Coco to a second degree felony for this conviction. Coco argued that his conviction should have been entered as a third degree felony.

The elements of obstructing justice are as follows: 1. That Coco altered, destroyed, concealed, or removed any item or thing; 2. With intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or

punishment of any person; 3. Regarding conduct that constitutes a criminal offense. *See* Utah Code Annotated § 76-8-306(1)(c), and Jury Instruction #28.

The jury was instructed that “conduct that constitutes a criminal offense’ means any conduct that would be punishable as a crime, including the following crimes:” 1. Aggravated Assault; 2. Burglary; 3. Homicide; 4. Abuse or Desecration of a Dead Human Body. Jury Instruction #29. *See also*, Utah Code Annotated § 76-8-306(2)(a).

The penalty for obstructing justice varies based on the nature of the underlying criminal offense. Utah Code Annotated § 76-8-306(3). In this case, if the conduct that constitutes an offense were a capital or first degree felony, then the penalty is a second degree felony. Utah Code Annotated § 76-8-306(3)(a). If the conduct were a second or third degree felony, then the conviction for obstructing justice is a third degree felony. Utah Code Annotated § 76-8-306(3)(b)(i). Any other criminal conduct not enumerated above would lead to a conviction of obstructing justice as a class A misdemeanor. Utah Code Annotated § 76-8-306(3)(c).

In this case the State argued that there were “several acts committed in the apartment that night that would be considered ‘conduct that constitutes a criminal offense’”—including assaults and homicide (R. 207). The State included “the third degree conduct of Graham and Joseph’s assault of Defendant, as well as Defendant’s assault of Graham and the killing of Donald Joseph” (R. 207).



In this case Coco was not charged with homicide against Joseph. Moreover, he was acquitted of aggravated assault (R. 253: 321). Other offenses the jury was given for their consideration included burglary, and abuse or desecration of a dead human body.

However, there was no evidence of burglary because testimony demonstrated that Graham, Joseph and Marquez were let into the apartment (R. 252: 62, 253: 251). Abuse or desecration of a human body can be either a class B misdemeanor or a third degree felony. Utah Code Annotated § 76-9-704. Any assault on Coco by Joseph and/or Graham could range from a class B misdemeanor for simple assault to a second degree felony or aggravated assault with serious bodily injury. And the level of offense for homicide ranges from a capital felony to a class A misdemeanor (negligent homicide). Utah Code Annotated §§ 76-5-201, 202, and 206. Accordingly, the penalty for obstructing justice in this case could have been a class A misdemeanor, or a third degree felony depending on which conduct the jury found that “would be punishable as a [separate] crime.” It is impossible to determine from the jury’s verdict what criminal conduct they found Coco obstructed.

In *State v. Bingham*, 575 P.2d 197 (Utah 1978), the defendant had been convicted of obstructing justice as a second degree felony for helping a friend escape from the scene where the friend was involved with a shooting. 575 P.2d 197. At the time obstructing justice could be either a class B misdemeanor or a second degree felony. *Id.* at 198. On appeal the defendant argued that his crime

did not amount to a second degree felony but conceded that the facts could sustain his conviction as a class B misdemeanor. *Id.*

In analyzing this issue the Utah court stated “It is our opinion that the statute should be applied in a reasonable and practical manner as to the guilt or innocence of the particular accused as shown by the circumstances...” *Id.* at 199. The court concluded that, “There are a number of possibilities as to what happened and why the firing of shots made Brown and Losh excited and desiring to get away in a hurry. Inasmuch as the facts shown are reasonably reconcilable with other possibilities, it is our conclusion that this evidence is not sufficient upon which it could fairly and justly be concluded beyond a reasonable doubt that the defendant knew or should have known that a homicide had been committed.” *Id.* at 199. Therefore, the court concluded that defendant’s conviction should be as a class B misdemeanor. *Id.*

In *Bingham*, the jury was specifically instructed that to convict the defendant they must find the elements that at the time made the offense a second degree felony. In this case, however, the jury was not instructed on what underlying criminal conduct would make the offense a third degree felony, and or a class A misdemeanor. If as the State alleges in this case, there are several acts which could qualify as conduct which could be punishable as a separate offense, it is impossible to tell which conduct the jury relied on in convicting Coco; and the penalties and the crimes relating to those acts vary widely.

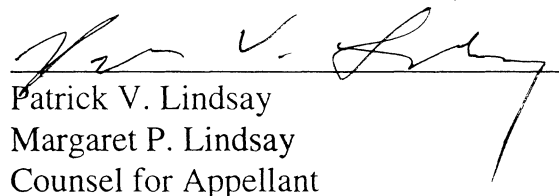
Coco asserts that this matter is akin to a *Shondel* type issue, and that equal protection and due process demand that where the conduct for which he was convicted could be a class A misdemeanor or a third degree felony, he is entitled to the lesser degree of punishment. Because in this case it cannot be established by the manner in which the jury was instructed, or by the jury verdict, that the underlying criminal conduct was a second or third degree felony. “Equal protection of the law guarantees like treatment of all those who are similarly situated.” *State v. Fedorowicz*, 2002 UT 67, ¶48, 53 P.3d 1194, *cert. denied*, 537 U.S. 1123, 123 S.Ct. 859, 154 L.Ed.2d 805 (2003) (quoting *State v. Bryan*, 709 P.2d 257, 263 (Utah 1985)).

Accordingly, Coco asserts that his conviction for obstructing justice should have been for a class A misdemeanor, enhanced by the group crime provision to a third degree felony, instead of the second degree felony for which the trial court sentenced him.

### **CONCLUSION AND PRECISE RELIEF SOUGHT**

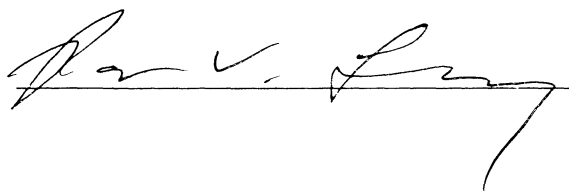
Coco asks that this Court vacate his sentence and enter his conviction as a third degree felony, or remand this matter to the trial court with instructions that judgment is to enter as a third degree felony.

RESPECTFULLY SUBMITTED this 18th day of April, 2007.

  
Patrick V. Lindsay  
Margaret P. Lindsay  
Counsel for Appellant

### **CERTIFICATE OF MAILING**

I hereby certify that I delivered four (4) true and correct copies of the foregoing Brief of Appellant to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 18th day of April, 2007.

A handwritten signature in cursive script, appearing to read "David V. Long", is written over a horizontal line.

## **ADDENDA**

## **ADDENDA**

→§ 76-8-306. Obstruction of justice in criminal investigations or proceedings--Elements--Penalties--Exceptions

(1) An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense:

(a) provides any person with a weapon;

(b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;

(c) alters, destroys, conceals, or removes any true or false evidence;

(d) makes, presents, or uses any item or thing known by the actor to be false;

(e) harbors or conceals a person;

(f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;

(g) makes any statement of fact that is known to be false;

(h) conceals information that is not privileged and that concerns the offense, arrest, charge, or disposition for charges for which the actor is the defendant.

(i) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.

(2)(a) As used in this section, "conduct that constitutes a criminal offense" means conduct that would be punishable as a crime apart from a violation of this section, and includes:

(i) any violation of a criminal statute of the state or of any of its political subdivisions, any other state, or any district or possession of the United States; and

(ii) conduct committed by a juvenile which would be a crime if committed by an adult.

(b) A violation of a criminal statute that is committed in another state, or any district, possession, or territory, or the District of Columbia, is a:

(i) capital offense if the statute provides for death or imprisonment without parole;

(ii) a first degree felony if the penalty provided includes imprisonment with parole or a minimum term of imprisonment exceeding 15 years;

(iii) a second degree felony if the penalty provided exceeds five years;

(iv) a third degree felony if the penalty provided includes imprisonment for any period exceeding one year; and

(v) a misdemeanor if the penalty provided includes imprisonment for any period of one year or less.

(3) The penalties for obstruction of justice are:

(a) a second degree felony if the conduct which constitutes an offense would be a capital felony or first degree felony;

(b) a third degree felony if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(2), (3), (d), (e), or (f);

(ii) the conduct that constitutes an offense would be any offense other than a capital or first degree felony and the actor violates Subsection (1)(a); or

(iii) the obstruction of justice is presented or committed before a court of law; or

(c) a class A misdemeanor for any violation of this section that is not enumerated under Subsection (3)(a) or (b).

(4) It is not a defense that the actor was unaware of the level of penalty for the conduct constituting an offense.



§ 75-B-203.1. Offenses committed in concert with two or more persons;-- Notice--Enhanced penalties

(1)(a) A person who commits any offense listed in Subsection (4) is subject to an enhanced penalty for the offense as provided in Subsection (3) if the trial of fact finds beyond a reasonable doubt that the person acted in concert with two or more persons.

(b) "In concert with two or more persons" is used in this section means the defendant was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons:

(i) was physically present; or

(ii) participated as a party to any offense listed in Subsection (4).

(c) For purposes of Subsection (1)(b)(ii):

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor's actions would cause him to be a party if he were an adult.

(2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(3) The enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony;

(d) second degree felony is a first degree felony; and

(e) first degree felony is an indeterminate prison term of not more than nine years and which may be for life.

(4) Offenses referred to in Subsection (1) are:

(a) any criminal violation of Title 36, Chapter 5, § 3/a, 3/b, or 3/c, regarding drug-related offenses;

(b) assault and related offenses under Title 76, Chapter 5, Part 1;

(c) any criminal homicide offense under Title 76, Chapter 5, Part 2;

(d) kidnapping and related offenses under Title 76, Chapter 5, Part 3;

- (e) any felony sexual offense under Title 76, Chapter 5, Part 4;
- (f) sexual exploitation of a minor as defined in Section 76-5a-3;
- (g) any property destruction offense under Title 76, Chapter 3, Part 1;
- (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2;
- (i) robbery and aggravated robbery under Title 76, Chapter 3, Part 3;
- (j) theft and related offenses under Title 76, Chapter 3, Part 4;
- (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-519;
- (l) any offense of obstructing court/department operations under Title 76, Chapter 3, Part 3, except Sections 76-3-302, 76-3-303, 76-3-304, 76-3-307, 76-3-308, and 76-3-312;
- (m) tampering with a witness or other violation of Section 76-3-306;
- (n) extortion or bribery to obstruct criminal proceedings as defined in Section 76-3-309;
- (o) any explosives offense under Title 76, Chapter 10, Part 3;
- (p) any weapons offense under Title 76, Chapter 10, Part 5;
- (q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12;
- (r) prostitution and related offenses under Title 76, Chapter 10, Part 13;
- (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (u) communications fraud as defined in Section 76-10-130;
- (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and
- (w) burglary of a residence facility as defined in Section 76-6-201.

(5) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

INSTRUCTION NO. 78

Before you can convict the defendant, Darren Raymond Coco, of the crime of Obstructing Justice, as charged in Count II of the Information, which is alleged to have occurred on or about November 18, 2005, in Salt Lake County, State of Utah, you must find from all of the evidence and beyond a reasonable doubt, each and every one of the following elements of this offense.

1. That the defendant, Darren Raymond Coco, as a party to the offense, altered, destroyed, concealed, or removed any item or thing;
2. With the intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person;
3. Regarding conduct that constitutes a criminal offense.

If, after careful consideration of all the evidence in this case, you are convinced of the truth of each and every one of the foregoing elements beyond a reasonable doubt, then you must find the defendant guilty of Obstructing Justice as charged in count II of the Information. If, on the other hand, you are not convinced beyond a reasonable doubt of any one or more of the foregoing elements, then you must find the defendant not guilty of count II.

INSTRUCTION NO. 29

"Conduct that constitutes a criminal offense" means any conduct that would be punishable as a crime, including the following crimes:

- 1 Aggravated Assault.
- 2 Burglary
- 3 Homicide
- 4 Abuse or Desecration of a Dead Human Body.

CLAYTON A. SIMMS (8321)  
Attorney for Defendant  
Clayton A. Simms, LLC  
39 Exchange Place, Suite 100  
Salt Lake City, Utah 84111  
Telephone: 801.359.0404  
Fax: 801.534.1948

**FILED DISTRICT COURT**  
Third Judicial District

AUG 9 4 2006

SALT LAKE COUNTY

By AC  
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT, SALT LAKE DEPARTMENT

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,  
Plaintiff,

v.

DARREN COCO,  
Defendant.

)  
)  
) MOTION TO ARREST JUDGMENT  
) PURSUANT TO RULE 23 OF THE  
) UTAH RULES OF CRIMINAL  
) PROCEDURE

)  
) Case No. 051908248FS  
) JUDGE J. DENNIS FREDERICK  
)

COMES NOW, defendant Darren Coco, by and through counsel of record, Clayton A. Simms, and move this Court to Arrest Judgment of his conviction on June 28th, 2006 pursuant to Rule 23 of the Utah Rules of Criminal Procedure, and convert the level of offense to a Third Degree Felony. This Motion is based upon the following memorandum.

DATED this 2<sup>nd</sup> day of August, 2006.

Clayton A. Simms  
Clayton A. Simms  
Attorney for Defendant

190

CLAYTON A. SIMMS (8321)  
Attorney for Defendant  
Clayton A. Simms, LLC  
39 Exchange Place, Suite 100  
Salt Lake City, Utah 84111  
Telephone: 801.359.0404  
Fax: 801.534.1948

FILED DISTRICT COURT  
Third Judicial District

AUG 04 2006

SALT LAKE COUNTY

By \_\_\_\_\_

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,  
Plaintiff,

v.

DARREN COCC,  
Defendant.

)  
) MEMORANDUM IN SUPPORT OF  
) MOTION TO ARREST JUDGMENT  
) PURSUANT TO RULE 23 OF THE  
) UTAH RULES OF CRIMINAL  
) PROCEDURE

) Case No. 051908248PS  
) JUDGE J. DENNIS FREDERICK

COMES NOW Defendant, by and through counsel, and submits the following memorandum in support of his Motion to Arrest Judgement Pursuant to Rule 23 of the Utah Rules of Criminal Procedure.

#### FACTS

On November 18, 2005, the defendant was in his apartment at 641 West North Temple in Salt Lake City when Jerry Graham and Donald Joseph attacked him. Donald Joseph assaulted the defendant with a wrench causing serious bodily injury to the defendant. Fortunately, for the defendant he was able to overcome his attackers. Mr. Joseph died as a result, but defendant Cocc's actions were deemed to be self-defense and no murder charges were filed for the death of Mr. Joseph. The defendant was charged with Aggravated Assault, a second degree felony for stabbing Jerry Graham and

Obstruction of Justice with the group enhancement, which was charged as a second degree felony.

On June 28th, 2006, the defendant was found not guilty of aggravated assault, a second degree felony, but was found guilty of Obstruction of Justice with the group enhancement, a second degree felony.

#### ARGUMENT

The defendant argues that the facts presented to the jury as to the obstruction charge does not constitute a second degree felony, and the obstruction of justice charge should be amended to a third degree felony pursuant to Rule 23, Utah Rules of Criminal procedure. This refutation argues that because the level of "criminal offense" was not proven to the jury and thus under Utah Code Annotated § 76-8-306(3)(c) the offense is a Class A misdemeanor; however, the group enhancement was found, and this moves up the level of the offense up to a third degree felony.

Rule 23 states: "At any time prior to the imposition of sentence, the court upon its own initiative may, or upon motion of a defendant shall, arrest judgment if the facts proved or admitted do not constitute a public offense, or there is other good cause for arrest of judgment. Upon arresting judgment the court may, unless a judgment of acquittal of the offense charge has entered or jeopardy has attached, order a commitment until the defendant is charged anew or retried, or may enter any other order as may be just and proper under the circumstances."

"The Shondel doctrine requires that when two different statutory provisions define the same offense, a defendant must be sentenced under the provision carrying the lesser penalty." *State v. Green*, 2000 UT App 33 ¶ 6, 995 P.2d 1250 (citing *State v. Shondel*, 20

Utah 2d 343, 453 P.2d 146, 148 (1969). In this case the level of offense may vary depending on which crime it is determined the obstruction is based upon, thus the defendant is entitled to the lesser punishment.

The level of offense for obstruction of justice is directly related to the level of the underlying criminal conduct. Under Utah Code Annotated §76-8-306, the crime of obstruction of justice would be a second degree felony if the underlying criminal conduct would be a capital felony or a first degree felony. However, under the same statute, Utah Code Annotated §76-8-306, the crime of obstruction of justice would be a third degree felony if the underlying criminal conduct would be a second degree felony or a third degree felony. Thus, the level of offense changes as the underlying criminal conduct changes.

The jury acquitted the defendant on an Aggravated Assault charge, which was a second degree felony, so it is impossible to determine what crime the jury determined that the defendant obstructed, thus he is entitled to the lesser penalty under *Shondel*. Jury instruction 28, which is the element instruction for the obstruction of justice charge does not list the specific "criminal offense". Attachment A. Jury instruction 29 defines "[c]onduct that constitutes a criminal offense" means any conduct that would be punishable as a crime..." and then list specific offenses that would be included. Attachment B. From this instruction the jury could have determined that the defendant obstructed on any crime and not just the listed crimes.



### CONCLUSION

For all of the above stated reasons the defendant respectfully requests that the level of offense be amended to a third degree felony.

DATED this 2<sup>nd</sup> day of August, 2006.



CLAYTON A. SIMMS  
Attorney for Defendant

1915